



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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MEMORANDUM

TO: The Commission

FROM: Daniel A. Petalas
Acting General Counsel

BY: Stephen A. Gura *sg*
Deputy Associate General Counsel for Enforcement

Peter G. Blumberg
Assistant General Counsel *PG*

Kimberly E. Hart
Attorney *KH*

SUBJECT: MUR 6973 (Kihuen) – Factual and Legal Analysis

At the July 12, 2016, Executive Session, the Commission voted to dismiss this matter in an exercise of prosecutorial discretion under *Heckler v. Chaney*, 470 U.S. 821 (1985). At that time, the Commission also voted to direct the Office of General Counsel to draft a brief Factual and Legal Analysis that dismisses this matter in accordance with the discussion at the Table in the style of an Enforcement Priority System dismissal. We are circulating the revised Factual and Legal Analysis for approval on tally. We also recommend the Commission close the file.

RECOMMENDATIONS

1. Approve the attached Factual and Legal Analysis.
2. Close the file in this matter as to all respondents.

Attachment
Factual and Legal Analysis

**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

MUR 6973

RESPONDENTS:

Ruben Kihuen

Ruben Kihuen for Congress and
Jay Petterson in his official capacity as
Treasurer

Tacos and Beer LLC

Alien Tequila Spirits Company, LLC

Latin Chamber of Commerce

Embassy Nightclub

Ramirez Group, Inc.

ActBlue

Daniel Chavez

I. INTRODUCTION

The Complaint in this matter alleges that Ruben Kihuen and his principal campaign committee, Ruben Kihuen for Congress and Jay Petterson in his official capacity as treasurer (the "Committee") (collectively, "the Respondents"), violated multiple provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). Among other things, the Complaint's allegations against Respondents include:

- the making and receipt of unreported prohibited in-kind contributions in the form of free event space, food, beverages, and invitations from Tacos and Beer LLC in connection with an April 25, 2015, Committee fundraiser;
- the making and receipt of unreported prohibited in-kind contributions in the form of free event space, food, beverages, invitations and sponsorship by Embassy Nightclub, Latin Chamber of Commerce and Alien Tequila Sprits Company, LLC in connection with a June 29, 2015, Committee fundraiser;

- 1 • the failure to report certain campaign expenditures, including salary payments to staff,
2 Kihuen's travel costs, and office rent owed to Ramirez Group, Inc. ("Ramirez Group"),
3 Kihuen's employer;
4
- 5 • the inclusion of an incorrect disclaimer on Kihuen's website solicitation page, which was
6 hosted on Respondent ActBlue's website; and
7
- 8 • an impermissible transfer from Kihuen's state committee to his federal committee.

9 The Commission received responses from Kihuen and the Committee ("Committee
10 Response"), Alien Tequila, ActBlue, and Daniel Chavez, which generally deny the making or
11 receipt of prohibited in-kind contributions. The Committee acknowledged that it amended
12 disclosure reports to reflect the receipt of certain *de minimis* in-kind contributions and
13 expenditures. In addition, the Respondents deny that they failed to timely report other campaign
14 expenses, violated the disclaimer provisions, or made or received an impermissible transfer.
15 Tacos and Beer, the Embassy Nightclub, the Ramirez Group, and the Latin Chamber of
16 Commerce did not submit responses.

17 II. FACTUAL AND LEGAL ANALYSIS

18 The Act prohibits corporations from making contributions to a federal political
19 committee other than independent-expenditure-only political committees, and further prohibits
20 any officer of a corporation from consenting to any such contribution by the corporation.¹ The
21 Act further prohibits a candidate or political committee from accepting or receiving any
22 contribution prohibited by section 30118(a).² A treasurer of a principal campaign committee of a
23 candidate for the House of Representatives is required to file, in a non-election year, quarterly

¹ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(a), (e).

² *Id.*; see also 11 C.F.R. § 114.2(d).

1 reports of receipts, including contributions, and disbursements.³ In-kind contributions shall be
2 reported as a receipt in accordance with section 104.3(a) and as an expenditure in accordance
3 with section 104.3(b).⁴ A debt or obligation, including a loan, written contract, written promise
4 or written agreement to make an expenditure, the amount of which is over \$500 shall be reported
5 as of the date on which the debt or obligation was incurred, except that any obligation incurred
6 for rent, salary, or other regularly recurring administrative expenses shall not be reported as a
7 debt before the payment due date.⁵ The Commission's regulations require disclaimers for all
8 internet websites of political committees available to the general public as specified by section
9 110.11(c).⁶ A federal candidate shall not solicit, receive, direct, transfer or spend funds in
10 connection with an election for federal office, including federal election activity, unless the funds
11 are subject to the limitations, prohibitions, and reporting requirements of the Act.⁷

12 In light of the *de minimis* nature of the potential violations, the Commission exercises its
13 prosecutorial discretion, pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985), and dismisses the
14 allegations that Ruben Kihuen, Kihuen for Congress and Jay Petterson in his official capacity as
15 treasurer, Tacos and Beer, LLC, Embassy Nightclub, Alien Tequila, the Latin Chamber of
16 Commerce, Ramirez Group, Inc, ActBlue and Daniel Chavez violated the Act.⁸

³ *Id.* § 30104(a)(2)(B), (b); *Id.* §§ 104.3(a)(2), (b).

⁴ *Id.* § 104.13(b).

⁵ *Id.* § 104.11(b).

⁶ 11 C.F.R. § 110.11(a), (c).

⁷ 52 U.S.C. § 30125(e)(1)(A).

⁸ *Heckler v. Chaney*, 470 U.S. 821 (1985).